

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO

ANTHONY J. MONTANO; and  
MARGARET A. MONTANO,

Plaintiffs,

No.

v.

DRIVETIME CAR SALES COMPANY, LLC;  
DT CREDIT COMPANY, LLC; and  
TRAVELERS CASUALTY AND SURETY  
COMPANY OF AMERICA,

Defendants.

**NOTICE OF REMOVAL**

TO THE CLERK OF THE ABOVE-ENTITLED COURT:

PLEASE TAKE NOTICE that Defendants DriveTime Car Sales Company, LLC and DT Credit Company, LLC (“DriveTime Defendants”), pursuant to 28 U.S.C.

§§ 1332, 1441 and 1446, hereby remove the above-captioned action from the Fourth Judicial District Court, County of San Miguel, New Mexico to the United States District Court for the District of New Mexico, and in support thereof aver as follows:

1. On June 22, 2011, this action was commenced by the filing of a Complaint in the Fourth Judicial District Court, San Miguel County, New Mexico, entitled Anthony J. Montano and Margaret A. Montano, Plaintiffs, vs. DriveTime Car Sales Company, LLC; DT Credit Company, LLC; and Fidelity and Deposit Company of Maryland, Defendants, Case number No. D-412-CV-2011-339.
2. The DriveTime Defendants were served with the Complaint on July 12, 2011.
3. Pursuant to a Motion filed by Plaintiff, Travelers Casualty and Surety Company

of America was substituted in for Fidelity and Deposit Company of Maryland as a defendant pursuant to an Order entered in state court on September 27, 2011.

4. This action is a civil action of which this Court has original jurisdiction under 28 U.S.C. §1332, and is one which may be removed to this Court by the DriveTime Defendants pursuant to the provisions of 28 U.S.C. §1441 in that it is a civil action between citizens of different states and the matter in controversy exceeds the sum of \$75,000, exclusive of interest and costs.

5. There is complete diversity of citizenship between the parties, in that:

- a. Plaintiffs allege they are citizens of the State of New Mexico (Compl., ¶ 2);
- b. Defendants DriveTime Car Sales Company, LLC and DT Credit Company, LLC are Arizona Limited Liability Companies with their principal place of business in Arizona; and
- c. Defendant Travelers Casualty and Surety Company of America is a Connecticut corporation with its headquarters and principal place of business at One Tower Square, Hartford, CT 06183.

6. The amount in controversy exceeds \$75,000, exclusive of interest and costs.

Although the Complaint does not specify the amount of Plaintiffs' damages, on December 5, 2011, Plaintiffs' counsel delivered to the DriveTime Defendants' counsel a written settlement demand valuing this action at \$475,000. (A copy of Plaintiffs' December 5, 2011 letter is attached hereto as Exhibit A).

7. A settlement letter is relevant evidence of the amount in controversy and is an "other paper" within the meaning of 28 U.S.C. § 1446(b). *See, e.g., McPhail v. Deere &*

*Co.*, 529 F.3d 947, 956 (10th Cir. 2008) citing *Cohn v. Petsmart, Inc.*, 281 F.3d 837, 840 (9th Cir. 2002); *Sisneros v. Wilson, No. CIV-06-1019 JB/RLP*, 2006 U.S. Dist. LEXIS 95400, at 21 (D.N.M. Nov. 30, 2006); *Vermande v. Hyundai Motor America, Inc.*, 352 F. Supp. 2d 195, 199-201 (D. Conn. 2004).

8. This Notice of Removal is timely filed in that (a) it is filed within 30 days after the receipt by the DriveTime Defendants of a paper from which defendants could first ascertain that the case is one which is removable and (b) it is filed within one year after the commencement of this action on June 22, 2011.

9. Therefore, this is a controversy between citizens of different states, and the amount in controversy, exclusive of interest and costs, exceeds \$75,000, making this case removable under 28 U.S.C. §§ 1332, 1441 and 1446.

10. A copy of all pleadings and orders from the state court action are attached hereto as Exhibit B.

11. A copy of this Notice will be promptly served upon counsel for Plaintiffs as required by 28 U.S.C. § 1446(d).

12. A Notice of the filing of this Notice of Removal will be filed with the Fourth Judicial District Court, San Miguel County, New Mexico promptly after the filing of this Notice of Removal, in accordance with 28 U.S.C. § 1446(d), and is attached hereto as Exhibit C.

13. In removing this action to federal court, the DriveTime Defendants expressly reserve, and do not waive, any and all rights and defenses that they have or may have.

WHEREFORE, notice is given that this action is removed from the Fourth Judicial District Court, County of San Miguel, New Mexico to the United States District

Court for the District of New Mexico.

LAW OFFICES OF  
ALLAN L. WAINWRIGHT, P.A.

By S/\_\_\_\_\_  
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